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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,186	08/21/2003	David A. Busche	20703-1	7059
30482	7590	10/06/2005	EXAMINER	
BEMIS COMPANY, INC.			AUGHENBAUGH, WALTER	
2200 BADGER AVENUE			ART UNIT	
OSHKOSH, WI 54904			PAPER NUMBER	

1772

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,186

Applicant(s)

BUSCHE ET AL.

Examiner

Walter B. Aughenbaugh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-69 is/are pending in the application.
- 4a) Of the above claim(s) 44-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-43 and 50-69 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-43 and 50-69, drawn to a bag, classified in class 428, subclass 35.7.
 - II. Claims 44-49, drawn to a method of forming a bag, classified in class 156, subclass 60.
2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make other and materially different product such as bag that does not comprise a peelable seal.
3. During a telephone conversation with Cedric Richeson on March 7, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-43 and 50-69. Affirmation of this election must be made by applicant in replying to this Office action. Claims 44-49 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.
4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Information Disclosure Statement

7. The information disclosure statement filed April 25, 2005 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered. The 5-page IDS document in the IFW file does not include a form 1449 or any other list.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 33, 54 and 62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claims 33 and 62, the claims are incomplete: the claim does not recite any values. Claim 54 recites the limitation "said at least one other constituent"; there is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 1-32, 34-43, 50-53, 55-61 and 63-69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Donovan et al. in view of Ramesh et al.

In regard to claims 1, 43 and 50, Donovan et al. teach an individual, end-sealed packaging bag (col. 1, lines 16-23, col. 2, lines 4-9, col. 5, lines 50-58 and Fig. 1 and 2) formed from a polymeric film (col. 3, line 65-col. 4, line 11) where the sheet has a first side, an opposing

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second side, an inner surface and an outer surface (Fig. 1 and 2) where the bag comprises a first seal (item 13 in Fig. 1 and item 25 in Fig. 2, col. 5, lines 50-55 and 60-64) connecting the first side to the second side and defining a tube member (col. 2, lines 6-9 and Fig. 1A, 2A, 3 and 4) having a first bag wall, a second bag wall, opposing first and second bag edges, an end and an open mouth opposite the end (since end seal 15 in Fig. 1 and end seal 26 in Fig. 2 are easily opened as taught by Ramesh et al. at col. 3, lines 8-9, the embodiment where the bag mouth is opened is taught by Ramesh et al.) and a second seal (end seal 16 in Fig. 1 and end seal 27 in Fig. 2) provided through the first and second bag walls where the second seal extends laterally across the width of both the first and second bag walls at a position proximate the end, whereby an empty product receiving chamber is defined by the first bag wall, the second bag wall, the second seal and the open mouth (col. 8, lines 57-59 and 64-66), wherein at least one of the first and second seals comprises a peelable seal (col. 6, lines 16-28). Donovan et al. teach that the film is preferably oriented polypropylene (col. 3, lines 65-66) and that the bag is used to store food products (col. 1, lines 8-12 and 24-28).

In further regard to claims 43 and 50, Donovan et al. teach that the first side and second side are bonded along the lengths thereof (Fig. 1 and 2) and that the first seal is a lap seal (item 13, Fig. 1) and a peelable seal (col. 8, lines 47-52).

Donovan et al. fail to teach that the polymeric film is heat shrinkable.

Ramesh et al., however, disclose a film comprising a biaxially oriented polypropylene film that is heat-shrinkable (col. 19, lines 21-24, col. 17, lines 13-24 and col. 8, line 14). Ramesh et al. teach that processed meat products such as poultry and ham are often packaged in heat-shrinkable plastic tubing known as casings (col. 1, lines 25-27). Therefore, one of ordinary skill

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in the art would have recognized to have used the heat-shrinkable biaxially oriented polypropylene film of Ramesh et al. as the oriented polypropylene film of Donovan et al. since heat-shrinkable biaxially oriented polypropylene films are well known oriented polypropylene films for use in packaging meat products such as poultry and ham as taught by Ramesh et al.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used the heat-shrinkable biaxially oriented polypropylene film of Ramesh et al. as the oriented polypropylene film of Donovan et al. since heat-shrinkable biaxially oriented polypropylene films are well known oriented polypropylene films for use in food packaging as taught by Ramesh et al.

In regard to claim 2, Donovan et al. teach that the first seal is a lap (item 13) or fin (item 25) seal (col. 8, lines 47-65) and that the first seal is peelable (col. 6, lines 16-28).

In regard to claims 3 and 8, Donovan et al. fail to teach that the first seal comprises a butt-seal. Ramesh et al., however, disclose that the casing comprises a butt seal where the butt seal includes a butt seal tape, and since Ramesh et al. disclose that the butt seal tape is heat shrinkable, the butt seal tape necessarily comprises two heat seals that join the two borders of the tape to the two respective sides of the film. Therefore, one of ordinary skill in the art would have recognized to have used the butt seal structure of Ramesh et al. to form the first seal of Donovan et al. since the butt seal is a well known seal for use in oriented polypropylene films for use in food packaging as taught by Ramesh et al.

In regard to claims 4 and 6, Donovan et al. teach that the first and second seals are peelable (col. 6, lines 16-28), so the heat-shrinkable film taught by Donovan et al. and Ramesh et al. includes a peelable system.

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In regard to claim 5, since Donovan et al. teach that the first and second seals are peelable (col. 6, lines 16-28), one of ordinary skill in the art would have recognized to have used a peelable system as the butt-seal of the bag taught by Donovan et al. and Ramesh et al. since the butt seal is a well known seal for use in oriented polypropylene films for use in food packaging as taught by Ramesh et al.

In regard to claim 7, the end of any piece of tape is a pull flap, so the tape of the bag taught by Donovan et al. and Ramesh et al. includes a pull flap. In regard to claim 9, Ramesh et al. teach that one of the sides extend outwardly to form a pull flap (see Fig. 1).

In regard to claim 10, Donovan et al. teach that the first seal includes the claimed seal strip (strips 13 and 25, col. 8, lines 47-65), where heat seals join the respective surfaces of the strip to the respective side of the film (col. 4, lines 40-44).

In regard to claims 11 and 12, Donovan et al. teach that the first and second heat seals are peelable seals (col. 6, lines 20-27), and therefore, in regard to claims 13 and 14, the strip film and heat-shrinkable film taught by Donovan et al. and Ramesh et al. include a peelable system. In regard to claim 15, since the lap seal, item 13, overlaps the package (Fig. 1), the strip film includes a pull flap.

In regard to claims 16 and 51, Donovan et al. teach that the film comprises a multilayer barrier film (col. 6, lines 16-28).

In regard to claims 17 and 52, Donovan et al. teach that the multilayer barrier film comprises an inner heat sealing layer (item 63 or item 67), a barrier layer (item 68), a core layer (item 65), a tie layer (item 67 or item 63) and an outer heat sealing layer (item 61) (Fig. 6 and

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col. 11, lines 18-36 and 56-66). Note that “adjacent” does not require absolute contact, but requires relatively close position. *Ex parte Hadsel* (PO BdApp) 109 USPQ 509.

In regard to claims 18-20, Donovan et al. and Ramesh et al. fail to teach the claimed seal strength values. However, since Donovan et al. teach that the seals are peelable (col.6, lines 16-28), one of ordinary skill in the art would have recognized to have selected materials for the seals such that the seal strengths of the seals are less than the claimed maximum values in order to render the seals sufficiently peelable as taught by Donovan et al.

In regard to claims 21 and 67, while Donovan et al. and Ramesh et al. fail to explicitly teach that the outer sealing layer (item 61) forms the outer surface of the bag, one of ordinary skill in the art would have recognized to have situated the film such that the outer sealing layer (item 61) forms the outer surface of the bag depending on the desired location of the seal.

In regard to claims 22 and 68, the tie layer, item 67, of Donovan et al. is permanently bonded to the core layer, item 65, and peelably bonded to the outer heat sealing layer, item 61, via the core layer and the inner heat sealing layer, item 63 (Fig. 6 and col. 11, lines 18-36 and 56-66).

In regard to claims 23 and 69, the tie layer, item 63, of Donovan et al. is permanently bonded to the outer heat sealing layer, item 61, and peelably bonded to the core layer, item 65 (Fig. 6 and col. 11, lines 18-30).

In regard to claims 24 and 53, Donovan et al. teach that the tie layer comprises a blend of polybutylene and at least one other constituent when item 63 is the tie layer (col. 11, lines 26-31 and col. 12, lines 5-15).

In regard to claim 25, at least one other constituent of Donovan et al. is a polyethylene (col. 11, lines 26-31).

In regard to claims 26 and 55, Donovan et al. teach that the outer heat sealing layer comprises polyethylene (col. 11, lines 21-26).

In regard to claims 27, 31, 56 and 60, Donovan et al. fail to teach that the core layer (item 65) comprises a blend of polyethylene and ethylene-vinyl acetate copolymer. Ramesh et al., however, disclose that a blend of a polyethylene and ethylene-vinyl acetate copolymer is a preferable material for use as a core layer (col. 22, lines 50-51 and col. 22, line 66-col. 23, line 2). Therefore, one of ordinary skill in the art would have recognized to have used the blend of a polyethylene and ethylene-vinyl acetate copolymer of Ramesh et al. as the material of the core layer of Donovan et al. since a blend of a polyethylene and ethylene-vinyl acetate copolymer is a preferable material for use as a core layer as taught by Ramesh et al. In further regard to claim 31, Donovan et al. and Ramesh et al. teach the bag as discussed above in regard to claims 24, 26, 29 and 30. In further regard to claim 60, Donovan et al. and Ramesh et al. teach the bag as discussed above in regard to claims 53, 55, 58 and 59.

In regard to claims 28, 29, 57 and 58, Donovan et al. teach that the barrier layer is selected from any four of the compounds claimed in claims 28 and 57 (col. 4, lines 2-10). In further regard to claims 29 and 58, Donovan et al. teach that the barrier layer is of polyvinylidene chloride copolymer (col. 4, lines 2-10).

In regard to claims 30 and 59, Donovan et al. teach that the inner heat sealing layer comprises a blend of polyethylene and ethylene-vinyl acetate copolymer (col. 13, lines 39-45 and col. 17, lines 25-29).

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In regard to claims 32 and 61, Donovan et al. teach that the other constituent is polyethylene (col. 12, lines 5-12). While Donovan et al. teach that polyvinylidene chloride is a suitable barrier resin, Donovan et al. fail to explicitly teach that the barrier layer comprises the particular claimed polyvinylidene chloride. However, since Donovan et al. teach that polyvinylidene chloride is a suitable barrier resin, one of ordinary skill in the art would have recognized to have used a blend of any polyvinylidene chloride resin as the barrier resin of the bag taught by Donovan et al. and Ramesh et al.

In regard to claims 34 and 63, Donovan et al. teach that the second seal is nonpeelable (col. 6, lines 16-28).

In regard to claims 64-66, Donovan et al. and Ramesh et al. fail to teach the claimed seal strength values. However, since the seals of Donovan et al. are seals, (col. 6, lines 16-28), one of ordinary skill in the art would have recognized to have selected materials for the seals such that the seal strengths of the seals are greater than the claimed minimum values in order to render the seals sufficiently strong as taught by Donovan et al.

In regard to claims 35 and 36, Donovan et al. fail to teach that the film is has a thickness that falls within the claimed thickness ranges. Ramesh et al., however, disclose that the film has a thickness of about 1 to 8 mils, and more preferably, 2 to 4 mils (col. 18, lines 63-67). Therefore, one of ordinary skill in the art would have recognized to have formed the film taught by Donovan et al. and Ramesh et al. such that it has a thickness of 1 to 8 mils, and more preferably, 2 to 4 mils since thickness values that fall within these thickness ranges are well known values for the thickness of a food casing as taught by Ramesh et al.

In regard to claim 37, Donovan et al. fail to teach that the film has the claimed shrinkage value. Ramesh et al., however, teach that the tubular film is biaxially oriented (equivalently, biaxially stretched) and that the tubular film has a shrinkage value in one or both directions of about 10-50%, and more preferably, about 15-35% at 185°F (85°C) (col. 8, lines 7-14). Therefore, one of ordinary skill in the art would have recognized to have selected a biaxially oriented polypropylene film that has a shrinkage value of about 15-35% at 185°F (85°C) for use as the biaxially oriented polypropylene film of the bag taught by Donovan et al. and Ramesh et al. since a biaxially oriented polypropylene film having a shrinkage value of from 15 to 35% is a well known film for use in food casings as taught by Ramesh et al.

In regard to claims 38-40, Ramesh et al. teach that the film has the claimed shrinkage values in both the machine and transverse directions (col. 8, lines 7-14).

In regard to claim 41, Donovan et al. teach that the first seal comprises a lap seal (col. 8, lines 47-59) and that the inner heat sealing layer forms the inside surface of the bag (Fig. 6).

In regard to claim 42, Donovan et al. teach that the first seal comprises a lap seal (col. 8, lines 47-59) and that the first side includes an unsealed portion (the portion of the film that forms the border of tunnel 37) extending outwardly beyond the first seal (col. 9, lines 4-8 and Fig. 3).

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 6:00pm and on alternate Fridays from 9:00am to 5:00pm.

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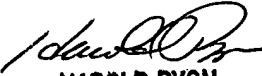
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

10/03/05

WBA


HAROLD PYON
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1772

10/3/05